***THE HONOURABLE Dr. JUSTICE G. YETHIRAJULU**

+Writ Petition No.20157 of 2004

% Dated: 09-11-2004.

 # T. Veeraiah. … Petitioner

$The Person-in-Charge, The Narsaraopet Taluq Fishermen Co-op. Society Ltd., Narsaraopet, Guntur District & 4 others.

… Respondents

! Counsel for petitioner: Mr.B. Chinnapa Reddy

^ Counsel for respondent Nos.1and 2: None

Counsel for respondent Nos.3 to 5: G.P. for Fisheries

< GIST:

>HEAD NOTE:

? Cases referred:

1) AIR 1991 AP 163

2) 1998 (4) ALD 41

3) AIR 1995 Orissa 23 (DB)

4) AIR 1994 Delhi 69

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION NO: 20157 of 2004

Between:

T. Veeraiah, S/o Krishnaiah,
R/o Lingamguntla Girijana Colony, Near ZP High School, Narasaraopet Post & Mandal, Guntur District.

... PETITIONER

AND

1. The Person-in-Charge, The Narasaraopet Taluq Fishermen Co-op Society Ltd, No.Q-2, Municipal Bungalow, Near Shina Vegetable Market, Opp: Gandhi Park, Narasaraopet, Guntur District.

2. The Election Officer, The Narasaraopet Taluq Fishermen Co-op Society Ltd, No. Q-2, O/o Asst. Director of Fisheries, First Lane, Pattabhipuram .Near Church, Guntur-4.

3. The Assistant Director of Fisheries, First Lane, Pattabhipuram, Near Church, Guntur - 4.

4. The Registrar -cum- Deputy Director of Fisheries, First Lane, Pattabhipuram, Near Church, Guntur - 4.

5. The District Collector, Guntur District, Guntur.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction, more particularly one in the nature of writ of Mandamus declaring the action of the Respondents in proceeding to conduct the elections on
10-11-2004 to the Narasaraopet Taluq Fishermen Co-op. Society Ltd,No. Q-2, Narasaraopet, Guntur District without enquiring into illegality and irregularities in the voters list dated 26-10-2004 of Respondents No.1 and 2 (i.e., illegality in deleting eligible voters) as illegal, arbitrary, unconstitutional and against to the principles of natural justice.

Counsel for the Petitioner: MR.B.CHINNAPA REDDY

Counsel for the Respondent Nos.3 to 5: GP FOR FISHERIES

The Court at the admission stage made the following:

Order:

1. The petitioner claims that he is one of the members of the first respondent—Fishermen Cooperative Society. He contends that there are 812 members in the Society as on 31-12-2001. They belong to Scheduled Tribe and their main avocation is fishing. Till recently the Society was managed by the Executive Committee consisting of eleven (11) members. He was one of the co-opted members of the said Committee. All the eligible members are voters for the election of the Managing Committee of the Society. The Managing Committee was superceded and the first respondent—person-in-charge was appointed to manage the affairs of the Society. The first respondent has no authority to take policy decisions. He has no authority either to remove the members or to admit them without calling for the General Body Meeting of the Society. The first respondent in utter disregard of the law is acting contrary to the interest of the members of the society. The respondents 3 and 4 have the knowledge about the misdeeds of the first respondent, but they did not choose to take action against the first respondent to prevent unauthorized functioning in the affairs of the Society. The first respondent pruned the list of eligible members from 812 to 203 by issuing a notice dated 14-9-2004. The first respondent deleted as many as 609 names of the members. The respondents never issued any show cause notice to the members whose names were deleted from the list. The first respondent fixed the date of the election to the Managing Committee of the Society on 10-11-2004 after removing the eligible members of the Society without notice or enquiry. The first respondent without following the previous voters' list published his own list of 203 members. Nobody has any authority to remove the members without any proper enquiry. Three-fourth of the members of the Society will be put to great loss due to the action of the respondents. The petitioner, therefore, approached this Court seeking to declare that the action of the respondents in proceeding to conduct the elections on 10-11-2004 without any enquiry into the illegalities and irregularities in the voters' list dated 26-10-2004 as arbitrary, illegal and unconstitutional and against the principles of natural justice.

2. The respondents 3 to 5 have filed a counter-affidavit contending that the Society is having 812 members. The first respondent was appointed by the third respondent on account of the misuse of the funds by the Managing Committee. As per the A.P. Cooperative Societies Rules, 1964 and as per G.O.Ms.No.37, Agriculture and Cooperation (Co.op-IV) Department dated

28-1-2002 and as per the order dated 4-11-2003 the Registrar of Cooperative Societies prescribed that a member of a society shall be eligible to exercise the right to vote only on payment of Rs.50/- each towards Share Capital and Thrift Deposit respectively. Only 203 members have paid the Share Capital and Thrift Deposit amount, therefore, they alone are entitled to participate in the election to be conducted on 10-11-2004. The second respondent issued notice to the members calling for objections on the list of 203 voters before

30-10-2004. The notice was published in the offices of the Mandal Revenue Officer, Narsaraopeta, Municipal Office, Narsaraopeta and the Office of the Assistant Inspector of Fisheries, Narsaraopeta, but no objections have been received by the second respondent on 30-4-2004. Later the second respondent published the final list of voters to be participated in the election. The first respondent acted as per the amended A.P. Cooperative Societies Act, 1964. Hence, he did not commit any violation of any of the provisions of the Act and the Rules. The writ petition is therefore liable to be dismissed.

3. The petitioner contends that he is one of the members of the Narsaraopeta Taluq Fishermen Cooperative Society, Narsaraopeta. The first respondent did not deny the same. The petitioner contends that the first respondent resorted to remove 609 members high-handedly without following the procedure prescribed under the Rules and as there is flagrant violation of the Rules by the first respondent, the election notification is liable to be quashed and the election is liable to be cancelled. The learned counsel for respondents 1 and 2 submitted that no member has been removed from the Society after the first respondent

assuming charge, but as per the Rules the members who committed default in payment of the Share Capital and Thrift Deposit are not entitled to participate in the election to cast their vote, therefore, out of the total list of 812 members, the list in question consisting of 203 was finalized as list of eligible voters.

4. The learned counsel for the petitioner submitted that the petitioner worked for the Society with all commitment and it is unjust on the part of the first respondent to remove all the members. He further submitted that all the members of the Society are entitled to vote irrespective of the default in payment of the amount towards Share Capital and Thrift Deposit. Therefore, there is no justification for the first respondent to delete the names of the three-fourth members of the Society and keeping only 203 members. The conduct of elections to the Society after deletion of the names of a majority of the members is illegal and the proposed elections to the Society on 10-11-2004 be cancelled. In support of the above contention, the learned counsel for the petitioner relied on certain judgments of the Delhi, Orissa and Andhra Pradesh High Courts.

5. In **Konda Setharamulu v. M.B.W. Industrial Co-op.Society Ltd.,** a learned single Jude of this Court held that the right to membership of a co-operative society is a valuable right and the procedure for expulsion of the members is mandatory and non-observation of it will vitiate the expulsion.

6. In **B. Ramanaiah v. Dist. Collector & Election Authority (Co-op.), Nellore** another learned single Judge of this Court held that deletion of two villages from the area of operation of the Society without following the provisions of Section 15-A and Rule 11-AA and also the Government Order is illegal.

7. The principle laid down in the above judgments is not disputed. The above judgments were rendered under different circumstances; therefore, they are not applicable to the facts of the present case.

8. In **Rahas Bihari Das v. State** a Division Bench of the Orissa High Court held that admission of members of the Society tantamounts to policy decision and is not an ordinary function relating to Society. The Bench further observed that preparing the Admission Register with unusual haste and without scrutiny showing bias in favour of the Managing Director in appointing him as an Administrator is a blatant exercise of power with malice.

9. In **A.S. Gahalout v. Lt. Governor of Delhi** a Full Bench of the Delhi High Court held that the election of a cooperative society should be free and fair and the procedure prescribed or envisaged under the Representation of People Act is not applicable since the cooperative society is totally on a different and independent legislation than the Representation of People Act. The Cooperative Societies Act deals with cooperative societies. The elections to the Managing Committee of the cooperative society are normally held in a free and fair manner.

10. The above decisions are also not directly applicable to the facts of the present case, as they laid down the general principles touching upon the cooperative law.

11. The Andhra Pradesh Cooperative Societies Rules 1964 ('the Rules' for brevity) have been brought into existence w.e.f. 27-7-1964. Rule 21 of the Rules deal with the Constitution of a representative general body. Subsequently, the Rules were amended from time to time. In exercise of the powers conferred under Section 130 (1) of the A.P. Cooperative Societies Act, 1964, the Government of Andhra Pradesh has issued G.O.Ms.No.37, Agriculture & Cooperation (Co.op-IV) Department dated 28-1-2002 making amendment to the Rules. By virtue of the said Government Order, Rule 21-A, which articulates about the Constitution, powers and functions of supervisory council, and Rule 21-B, which speaks about the preparation of list of defaulters and its publication, have been added. Before deciding the case on hand, it would be appropriate to look at Rule 21-B of the Rules and it reads as follows:

21-B. Preparation of list of defaulters and its publication:

1) It shall be the responsibility of the Chief Executive Officer of the society to issue notices to all defaulters at the beginning of each half-year indicating the loan disbursed, amounts overdue, repaid and balance overdue (principle and interest separately) and indicate the date before which they should repay failing which their names shall be included in the list of defaulters published and will be placed before the ensuing General Body.

2) The Managing Committee before convening the General Body shall finalise the list of defaulters in descending order of the amount due and place it on the notice board of the society and at its branches and the names of defaulters shall be read out in the General Body with amounts due by them.

Also provided that if any member of the Managing Committee or the Board is a defaulter the Chief Executive Officer of the society or Chairman where there is no Chief Executive Officer shall inform the Registrar immediately so that the Registrar would take necessary action as per the Act and Rules.

12. In compliance of the above Rule, the first respondent issued a publication dated 17-9-2004 duly signed by several members of the Society drawing the attention of the members to pay Rs.50/- towards Share Capital and Rs.50/- towards Thrift Deposit and obtain receipt from the Branch indicated therein after making the payment. It was specified in the said publication that only those who pay the said amount are eligible to participate in the election and those who do not pay the amount are not eligible to exercise their franchise. He did not pass any order suspending, removing or expelling any of the members of the Society who are already on rolls. The list prepared by the first respondent is only the list of eligible voters. There was a specific direction to the first respondent to conduct elections; therefore, he took all steps to make the list of voters ready to participate in the election by following the procedure prescribed under Rule 21-B of the Rules. The learned counsel for the petitioner did not touch upon the aspect regarding the Share Capital and Thrift Deposit payable by the members of the Society, but continuously harped upon the total number of members at 812 and pleaded that all of them are eligible for participating in the election irrespective of their irregular payment of the amounts as mentioned supra. On perusal of Rule 21-B of the Rules

and the publication dated 17-9-2004 issued by the first respondent herein, I am of the opinion that it is not desirable to stop the election that is proposed to be held on 10-11-2004. If there is any grievance to the petitioner regarding the procedure followed by the first respondent or the irregularities, if any, noticed in the conduct of elections, he has every liberty to approach the appropriate forum for redressal of his grievances.

13. The petitioner approached this court by giving a different picture that the first respondent high-handedly removed the names of three-fourth of the members of the Society, but, after going through the record, I am convinced that the first respondent followed the procedure prescribed under the Rules regarding the preparation of voters list. There is no illegality or arbitrariness in the preparation of the list of eligible voters for the election going to be held on 10-11-2004. I do not find any ground to quash the voters' list prepared by the first respondent and published on 26-10-2004. The writ petition is accordingly dismissed.

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(Dr.G.Yethirajulu, J)

09th November 2004

Note:

L.R.copy be marked:

(By order)

svs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. One fair copy to Hon'ble Dr. Justice G.Yethirajulu (for his lordships kind perusal)
2. The Person-in-Charge, The Narasaraopet Taluq Fishermen Co-op Society Ltd, No.Q-2, Municipal Bungalow, Near Shina Vegetable Market, Opp: Gandhi Park, Narasaraopet, Guntur District.
3. The Election Officer, The Narasaraopet Taluq Fishermen Co-op Society Ltd, No. Q-2, O/o Asst. Director of Fisheries, First Lane, Pattabhipuram .Near Church, Guntur-4.
4. The Assistant Director of Fisheries, First Lane, Pattabhipuram, Near Church, Guntur - 4.
5. The Registrar -cum- Deputy Director of Fisheries, First Lane, Pattabhipuram, Near Church, Guntur - 4.
6. The District Collector, Guntur District, Guntur.
7. Two C.Cs. to he Government Pleader for Fisheries, High Court of Andhra Pradesh, Hyderabad.(OUT)
8. The Under Secretary, Ministry of Law, Justice & Company Affairs, New Delhi.
9. The Secretary, High Court Bar Association, Library, High Court Buildings, Hyderabad.
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